

Support
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-218291

DATE: May 20, 1985

MATTER OF: American Preparatory Institute

DIGEST:

Contracting agency is not obligated to equalize the competitive advantage that accrues to an offeror because of its own particular business circumstances unless such an advantage results from preference or unfair action by the government.

American Preparatory Institute protests the terms of request for proposals (RFP) No. NOO612-84-R-0548, issued by the Naval Supply Center, Charleston, South Carolina. The successful contractor will prepare, conduct, and administer academic courses under the Navy Campus High School Completion Program.

American contends that the Navy failed to comply with the requirement for "full and open competition" in the Competition in Contracting Act of 1984, Pub. L. No. 98-369, 98 Stat. 1175 (1984). American alleges that those offerors who are accredited in states that have lower minimum requirements for the issuance of a high school diploma have a competitive advantage over those in states where requirements are more stringent. We deny the protest.

The RFP, which had an amended closing date of April 22, 1985, required offerors to submit prices for an estimated number of "Carnegie Units" ^{1/} for courses to be conducted

^{1/} A Carnegie Unit is defined in the RFP as a standard of measurement for describing the secondary school subject matter pattern that constitutes the entrance requirements of a college. Assuming 16 units of work in a 4-year secondary school pattern, the Carnegie Unit represents a year's study in any subject (not less than 120 60-minute hours or their equivalent). Thus secondary schools organized on other than a 4-year basis can estimate their work in terms of the Carnegie Unit.

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on board ships of the Atlantic and Pacific Fleets (Lots I and II). Offerors were to indicate the courses needed for five sample students with different academic backgrounds, as described in the RFP, and the number of Carnegie Units required for each of those courses. To determine the lowest evaluated offeror(s), the Navy will add the number of whole or half Carnegie Units required for all five students, then multiply this total by the price per whole or half Carnegie Unit for each of the two lots.

Initially, we point out that 10 U.S.C. § 2305(a)(1)(A), as amended by section 2723 of the Competition in Contracting Act, supra, requires Defense agencies to specify their needs and solicit proposals in a manner designed to achieve "full and open competition." However, this section applies only to solicitations issued after March 31, 1985. Id. § 2751. Since the subject RFP was issued on July 16, 1984, the Act does not apply to this procurement. Rather, the standard applicable to the Navy's actions is the "maximum practicable" competition requirement of 10 U.S.C. § 2304(g) (1982).

The Navy argues that it has achieved this standard because its specifications do not restrict the RFP to any one educational institution, any one region of the country, any particular textbooks or materials, or any type of educational institution other than accredited institutions. The Navy also takes the position that in determining the method by which it will evaluate proposals, it is not under an obligation to equalize the competitive situation of all potential offerors.

We agree. We have recognized that a firm may enjoy a competitive advantage by virtue of its own particular circumstances. As long as the advantage is not the result of preference or unfair action by the government, the contracting agency is not required to equalize the competitive position of offerors. See The Hygenic Corp., B-215110, May 24, 1984, 84-1 C.P.D. ¶ 571; Rodenberg's Floor Coatings, Inc., B-211908, June 20, 1983, 83-2 C.P.D. ¶ 5; Stanley and Rack, B-204565, Mar. 9, 1982, 82-1 C.P.D. ¶ 217.

Here, different state requirements for the granting of a high school diploma are conditions of the marketplace, and were not created by the Navy or any agency of the government. In the absence of any evidence of preference or -

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unfair treatment by the Navy, there is no legal basis to object to the evaluation scheme that the Navy proposes to follow.

The protest is denied.

for Raymond G. Van
Harry R. Van Cleave
General Counsel